SEP 27 1950
CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 256.

RD-DR CORPORATION,

Petitioner,

against

CHRISTINE SMITH, *et al.*,

Respondents.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

SAMUEL I. ROSENMAN,
RICHARD S. SALANT,
AMBROSE DOSKOW,
Attorneys for Petitioner.

September 1950.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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Respondent's brief (p. 4) contends that petitioner may not maintain this attack on the constitutionality of the Atlanta censorship ordinance because the application for approval of its motion picture was made by the co-plaintiff, Film Classics, Inc., which did not join in the petition since its distribution rights have been terminated. This memorandum is addressed solely to that point.

1. In setting forth the facts regarding the changed interest of Film Classics, Inc., petitioner's counsel followed the procedure recommended in the recent text by Stern and Gressman for cases of possible mootness or abatement (*Supreme Court Practice,* pp. 339-40). Since respondents have raised a question as to the interest of the petitioner to proceed alone, we are annexing to this memorandum copies of the documents which establish that petitioner has succeeded to the rights of both the original plaintiffs.

Annexed hereto as Exhibit 1 is an extract from the distribution agreement between the two original plaintiffs regarding the right of petitioner to terminate that agreement. Annexed hereto as Exhibit 2 is an excerpt from the New York Law Journal of June 30, 1950, showing that Film Classics, Inc. had assigned for the benefit of creditors. On June 30, 1950, petitioner addressed a termination notice by registered mail to Film Classics, Inc., and a copy of that notice is annexed hereto as Exhibit 3. The right to distribute the picture in the City of Atlanta, which petitioner reacquired from Film Classics, Inc. upon the mailing of that notice, has not been granted by petitioner to any other party. Upon the termination of the distribution agreement petitioner succeeded to the entire interest of Film Classics, Inc. in the motion picture and to all the rights which that company secured by its application to the respondents for approval of the picture, and those rights are now in petitioner alone.

2. Furthermore, this action challenges the validity of the Atlanta ordinance on its face. Apart from the necessity of establishing that the required jurisdictional amount is involved, neither plaintiff was obligated to apply for approval of the picture before commencing the action. Compare *Smith* v. *Cahoon,* 283 U. S. 553, 562; *Hague* v. *C. I. O.,* 307 U. S. 496; *Thornhill* v. *Alabama,* 310 U. S. 88, 97. Respondents' answer admits that their action pursuant to the Atlanta ordinance deprived the plaintiffs of film rentals which would have exceeded the sum of $3,000 (R. 24). The present petitioner is now the only party that is suffering that loss. That loss is the direct result of the decision which respondents reached regarding petitioner's motion picture, and that decision was obviously unaffected by the identity of the applicant for approval of the picture.

3. The suggestion in the opposing brief that petitioner was not originally a proper party to the suit is wholly groundless. When the complaint was filed petitioner was suffering a part of the loss resulting from the application of the ordinance. Now petitioner is bearing the entire loss alone. The joinder of the two plaintiffs was plainly authorized by Rule 20 of the Rules of Civil Procedure. It is equally plain that the filing of the petition by the present petitioner alone is authorized by Rule 48 of the Rules of this Court.

In any event, the question of petitioner's standing as an original party is not now relevant, since respondents concede that Film Classics, Inc. was a proper party and since, as shown above, petitioner has succeeded to the rights of Film Classics, Inc.

Respectfully submitted,

Samuel I. Rosenman,
Richard S. Salant,
Ambrose Doskow,
Attorneys for Petitioner.

Exhibit 1.

Extract from Distribution Agreement dated February 23, 1949 between RD-DR Corporation as Producer and Film Classics, Inc. as Distributor, Relating to the Motion Picture Entitled "Lost Boundaries".

FORTIETH: If Distributor shall fail to make any payment hereunder when due, or if Distributor shall default in the performance or observance of any material term covenant or condition of this agreement on its part to be performed, and such default shall continue for a period of ten (10) days after written notice thereof sent by Producer, or if Distributor should file petition under one or more of the provisions of the Bankruptcy Act of the United States, or if a petition under one or more of the provisions of the Bankruptcy Act of the United States should be filed against Distributor or a receiver, trustee, custodian or liquidator should be appointed over substantially all of the assets of Distributor by any court having jurisdiction, and such petition against Distributor, or such appointment shall not be dismissed or vacated within thirty (30) days thereafter, *or if the Distributor should make a general assignment of all its assets* or if the Distributor shall be dissolved, either voluntarily or involuntarily, then and in any of said events *Producer,* in addition to all other rights and remedies which it may have and without derogation thereof, *shall be entitled to terminate this agreement by mailing notice of such termination to Distributor by registered mail, and upon the mailing of such notice this agreement and the license herein granted shall forthwith terminate, cease and come to an end.* The Producer shall, upon such termination of this agreement, be entitled to be subrogated to the rights of Distributor with respect to the Picture under such exhibition contracts or other agreements relating to the distribution, marketing or exploitation of the Picture as Producer may elect, without the assumption of any liability thereunder by Producer. Upon such termination, the Producer shall have the right to take possession of, and Distributor

shall forthwith deliver to Producer, all prints and negatives of the Picture, all advertising material contracts with exhibitors and abstracts from books of account and records of bookings with reference to the Picture, and all records of Accounts Receivable in connection with the distribution of the Picture, without liability therefor to any person, firm or corporation, or other entity whatsoever, and Producer shall have the right to purchase advertising material for the Picture directly from those supplying same to Distributor. In such event Producer may arrange for the distribution of the Picture by any third party upon such terms as it may deem advisable, but shall pay Distributor sufficient sums to reimburse it for the advances made under this agreement, after Producer has reimbursed itself in full for its additional expenses incurred in taking over the distribution of the Picture, and subject to any claims by Producer against Distributor by way of damages.

(Emphasis supplied.)

Exhibit 2.

Extract from New York Law Journal,
Friday, June 30, 1950.

ASSIGNMENTS

NEW YORK COUNTY

Film Classics, Inc., motion picture distribution at No. 1501 Broadway, yesterday assigned for the benefit of creditors to Irving Kaufman of No. 1440 Broadway.

Exhibit 3.

June 30, 1950

Film Classics, Inc.
1501 Broadway
New York 18, N. Y.

Gentlemen:

Reference is made to the Distribution Agreement dated February 23, 1949 between your company as Distributor and the undersigned as Producer relating to the motion picture entitled LOST BOUNDARIES.

In view of the fact that you made a general assignment of your assets for the benefits of creditors on June 29, 1950, we hereby give you notice that we elect to terminate said Distribution Agreement pursuant to the provisions of Article FORTIETH thereof.

We hereby demand that pursuant to the provisions of said Article FORTIETH, you prepare to deliver to us forthwith all prints and negatives of said motion picture, all advertising material relating thereto, all contracts with exhibitors, abstracts of books of account, records of booking with reference to the picture, and all records of accounts receivable in connection with the distribution of the picture. Specific instructions regarding such delivery will be given to you next week.

Very truly yours,

RD-DR CORPORATION

By /s/ F. BORDEN MACE
President